

Trials: Trial Chronology

Investigation: Police are alerted to a crime and interview witnesses, check the crime scene for evidence (fingerprints, clothing samples, hair, weapons, bullets) and try to find a suspect.

Searches: If the police have probable cause to suspect someone, a judge will give them a warrant to search that person's home, office or car, or to tap that person's phones. The warrant will be very specific about the place to be searched and what is to be looked for. If other illegal substances are found while the police are strictly following the warrant, it may be used against the suspect.

Grand Jury: Once there is enough evidence against someone, the District Attorney's Office (prosecution) will present the case to a Grand Jury. This is a group of approximately 23 people who sit for a period of weeks and hear many cases. Only the prosecution appears before the Grand Jury, although the defense is invited. The Grand Jury decides if there is enough evidence to bring the case to court. They do **NOT** decide if the suspect is innocent or guilty. They only decide whether the evidence suggests that he/she might be guilty. If they think it should go to trial, they are said to vote a TRUE BILL. If there isn't enough evidence, they vote NO BILL, and there is no trial.

Indictment: If the Grand Jury votes a True Bill, the District Attorney's Office draws up an indictment. This is an official paper detailing the charges against the suspect, citing specifically the laws that he or she has broken. It usually states the facts of the case generally but not specifically.

Arraignment: The arraignment is a hearing that has three purposes. It usually follows the indictment almost immediately. At this hearing, the defendant is **read the charges** against him or her. The judge hears arguments and **decides if the suspect will be kept in jail or released**, and whether or not **bail** will be allowed and how much it will be. Finally, it is decided **when the next step** in the case will take place (usually 1-6 months later).

Discovery: Both sides attempt to find out more information, including what the other side knows. Both sides must give their opponents a list of their witnesses and exhibits (evidence). This allows both sides to prepare their case. The prosecution must turn over any evidence it finds suggesting that the suspect might be innocent. The defense has no duty to turn over incriminating evidence to the prosecution. The two sides obtain this information from one another through MOTIONS, legal requests which go through the judge's office. They may complain to the judge if their motions are not properly answered. They also may complain to the judge if the other side makes motions that are unfair or harassing.

Hearings: If there are issues about whether certain evidence should be allowed at trial (was the search or line-up legal, for example), the judge will hold **hearings, mini-trials** with no jury, before the trial. These hearings will include witnesses. For example, if material obtained in a search is being challenged, the police officer who made the search will be called to testify about how he or she obtained the warrant and how he or she conducted the search. People present during the search may also be called as witnesses.

Voir Dire (Jury Selection): The lawyers from both sides question potential jurors to decide who they want on the jury. Both lawyers are allowed a certain number of peremptory challenges

(they don't have to give a reason for kicking this person off the jury) and an unlimited number of challenges for cause (the juror is prejudiced, knows someone involved in the trial, etc).

Trial: If the case is **not plea bargained** (the lawyers make a compromise to avoid going to trial - this happens in almost 90% of all criminal cases in the United States), a trial is conducted at this point.

Trial Components:

Opening Statements: The lawyers from both sides get to make speeches. They **outline the basic themes of their case**. It is important for the prosecutor to explain what he/she has to prove and the evidence on each of these points. In a criminal trial, the defense attorney doesn't have to prove anything except reasonable doubt that the client did it, so he/she explains things that should make the jury doubtful of the prosecutor's evidence. In a civil trial, the plaintiff needs to show that its case is more likely right than the defense. This is like the introduction to an essay. It needs to define and introduce everything you want the jurors to think about and look for during the trial. It should provide them with a roadmap to the lawyer's argument.

Prosecution Case: The Prosecutor calls his/her witnesses one by one. These witnesses are first subjected to **Direct Examination**. This is when the Prosecutor questions his or her own witnesses. When the prosecutor is done, the defense attorney may ask questions: this is **Cross Examination**. After Cross, the Prosecutor may go again (**Re-Direct**). If there is Re-Direct, the Defense may Re-Cross Examine. This goes on until one side refuses its right to question. Then the next witness is called. **During questioning, the lawyers may not make speeches to the jury.** They may not make statements to the witness. **They must elicit evidence by asking questions.** Therefore, it is vital that the lawyers carefully plan out their questions in advance and, where possible, practice these questions with the witnesses before the trial. When all of the prosecution's witnesses are done, the prosecution rests.

Defense Case: After the prosecution rests, the defense presents its witnesses. The process is the same except that the defense goes first. If the defense feels the prosecution hasn't proved its case, it doesn't have to call anyone.

Rebuttal Witnesses: After the defense is done, the prosecution may call witnesses only if their testimony directly conflicts with or disproves evidence of one of the defense witnesses.

Expert Witnesses: Some witnesses are called because of their knowledge of a certain area rather than having seen events pertaining to the actual crime. Examples are doctors, psychiatrists and engineers. These witnesses must be qualified before testifying. This is done by having the witness tell how he or she got to be an expert (education, degrees they hold).

Objections: During questioning of witnesses, the opposing lawyer may object to the way the questioning lawyer is operating. Some objections are **hearsay** (in most cases, someone may not testify to what someone told them about what happened; the one exception is if this puts the witness in a bad light. It is then assumed to be true because it is against the witness's own interest), **leading the witness** (putting words in the witness's mouth instead of asking questions), **badgering the witness or being abusive**, being repetitive, or asking **irrelevant** questions. The judge will decide whether or not this behavior will be allowed or not.

Motions: After the prosecution case, after the closing arguments, and after a guilty decision, the defense attorney will move for the case to be dismissed for **lack of evidence**. This is usually wishful thinking, but if there really isn't enough evidence, the judge can dismiss the case, even if the jury decides the defendant is guilty. The defense attorney can also move to have the charge dismissed on the basis of legal issues, based on the case law and precedent.

Closing Statements: The attorneys summarize their cases. The prosecutor should go over each of the necessary elements of the case, usually specifying what the actual crime was and the evidence that the defendant did it, and what the defendant's state of mind was when committing the crime. The defense should build sympathy for his or her client and point out any doubts or questions about the prosecution's case. This is a like the summary to an essay. It needs to tie everything together and remind the jury about everything you want the jury members to consider.

Charge Motions: Lawyers may make motions about how the judge should instruct the jury about the law in the case. They would use previous cases and statutes to get the judge to explain the law involved in the case in a way favorable to their client.

Judge's Charge: The Judge explains the law in the case to the jury and explains what is necessary for them to find to reach a guilty verdict. The judge must explain that they can only find the defendant guilty in a criminal case if the prosecutor proved the case BEYOND A REASONABLE DOUBT. In a civil suit, the judge must explain that the plaintiff must prove his/her case to a preponderance of the evidence and explain that this means basically that their position is more likely than not the right one. The jury is then sent away to decide the verdict.

Sentencing: If the defendant is found guilty, the judge will pass sentence at a later date. This usually gives time for the judge to study the defendant's background and for both sides to make arguments to the judge about the punishment. Sometimes, deals are worked out at this stage.

Appeals: If the defendant loses the case, she/he may appeal to a higher court if there is an argument that the judge made mistakes. The appeals court doesn't retry the case but judges whether or not mistakes were made and if they were, whether or not they were serious enough to influence the trial. In a civil case, either side may appeal.